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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RED.COM, INC. dba RED DIGITAL  
CAMERA, a Washington corporation,

Plaintiff,

vs.

EPIC GAMES, INC., a Maryland  
corporation,

Defendant.

Case No.: SACV08-00494 DOC (ANx)

COMPLAINT FOR DECLARATORY  
RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs, Red.com, Inc. dba Red Digital Camera (hereinafter referred to as  
"Red"), complains of Defendant Epic Games, Inc. (hereinafter referred to as  
"Games") and alleges as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction over this action is founded upon 15 U.S.C. § 1121 and  
28 U.S.C. §§ 1331 and 1338. Venue is proper under 28 U.S.C. §§ 1391(b-c) and  
28 U.S.C. § 1400(b). The claim arose in this judicial district and Defendant is  
doing business in this judicial district.

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## THE PARTIES

2. Plaintiff Red is a corporation organized and existing under the laws of the state of Washington having its principal place of business located at 20291 Valencia Circle, Lake Forest, CA 92630, within this judicial district.

3. Plaintiff is informed and believe, and thereupon alleges, that Defendant Games was and is a corporation duly organized and existing under the laws of the state of Maryland with its principal place of business located at 620 Crossroads Boulevard, Cary, North Carolina 97511, and doing business in California and within this judicial district.

## FACTUAL BACKGROUND

4. Red is the inventor, manufacturer and seller of high performance digital cinema cameras. Red began selling its first digital camera on or about August 31, 2007. On or about April 15, 2008, Red publicly announced and displayed its new 5K EPIC digital cinema camera. The Epic digital cinema camera will be available for purchase by the public in early 2009 and features S35MM new Mysterium X Sensor, and a six pound fully machined aluminum body. Red has already engaged in extensive marketing and advertising campaigns to promote the Epic digital cinema camera.

5. On February 8, 2008, Red filed an intent to use Trademark Application, Serial No. 77/392,287 for the word mark "Epic" for use in connection with digital cinema camera systems and accessories, which is now pending.

6. Defendant Games, through its attorneys Hunton & Williams, sent a cease and desist letter dated April 22, 2008 to Red alleging that Games is the owner of the Epic mark including Trademark Registration No. 2,168,887 for computer game software for personal computers, home video game consoles and arcade based video game consoles in Class 9 and further is the owner of the mark Epic Games, including Trademark Registration No. 2,527,709 for computer game

1 software for personal computers, home video game consoles and arcade based  
2 video game consoles in Class 9. Defendant Games has demanded that Red  
3 withdraw its pending trademark application and cease and desist from the use of  
4 the "Epic" mark in any further registration applications or in conjunction with its  
5 business.

6 7. Red has begun the promotion and marketing of its Epic digital  
7 cinema camera system under a cloud of real and substantial controversy  
8 inasmuch as Games claims that the Red word mark "Epic" will violate Games'  
9 trademark rights.

## 10 FIRST CLAIM FOR RELIEF

### 11 Declaratory Judgment of Non-Infringement

12 8. The allegations of paragraphs 1 through 6 are replied and realleged as  
13 though fully set forth herein.

14 9. Plaintiff Red files this claim against Defendant Games and seeks a  
15 declaration that it has not and does not infringe in any way on U.S. Registered  
16 Trademark Nos. 2,168,887 and 2,527,709 allegedly owned by Games or any  
17 common law trademark rights claimed by Games. Further, Plaintiff Red seeks a  
18 declaration that it is not required to withdraw or cancel its pending Trademark  
19 Application No. 77/392,287.

20 10. This is a claim arising under Federal Declaratory Judgment Act, 28  
21 U.S.C. §§ 2201 and 2202 and under the trademark laws of the United States, 15  
22 U.S.C. §§ 1121. This court has subject matter jurisdiction under 28 U.S.C. §§  
23 1331 and 1338. Venue is established under 28 U.S.C. §1391 (b) and (c).

24 11. Defendant Games claims to be the owner of U.S. Registered  
25 Trademark Nos. 2,168,887 and 2,527,709 which Games alleges are being  
26 infringed by Red.

27 12. Plaintiff Red disputes the validity of U.S. Registered Trademark  
28 Nos. 2,168,887 and 2,527,709 allegedly owned by Games and further contends

1 that there is no likelihood of confusion between those marks and the mark  
2 currently used by Red for its Epic digital cinema camera.

3 13. Accordingly, there is substantial and actual controversy between  
4 Red and Games over whether Red infringes Games' U.S. Trademark Nos.  
5 2,168,887 and 2,527,709 or any other common law trademark rights held by  
6 Games. Plaintiff Red seeks resolution of the issues asserted in this claim as the  
7 allegations and claim made by Defendant Games have passed a cloud over  
8 Plaintiff's ability to conduct business and promote its "Epic" product so long as  
9 these issues regarding the trademarks remain unresolved. Plaintiff Red therefore  
10 needs and seeks resolution of the issues asserted in the claim.

11 14. Plaintiff is entitled to declaratory relief.

12 WHEREFORE, Plaintiff prays as follows:

13 1. That it be adjudicated and declared that Plaintiff does not infringe  
14 U.S. Registered Trademark Nos. 2,168,887 and 2,527,709;

15 2. That Defendant Games be enjoined from asserting that Plaintiff, its  
16 officers, agents, representatives, stockholders, owners, investors and/or customers  
17 infringe, contributorily infringe or induce infringement of any claims of U.S.  
18 Registered Trademark Nos. 2,168,887 and 2,527,709;

19 3. That Defendant Games be enjoined from bringing suit against any  
20 officers, agents, representatives, stockholders, owners, investors and/or customers  
21 of Red alleging they infringe, contributorily infringe or induce infringement of  
22 the claims of U.S. Registered Trademark Nos. 2,168,887 and 2,527,709;

23 4. That Plaintiff Red not be required to withdraw or cancel its pending  
24 Trademark Application No. 77/392,287 for Red's Epic Digital Cinema Camera;

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26 ... ..

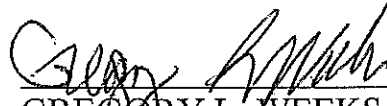
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1           5.       That Plaintiff have such other and further relief as circumstances of  
2 this case may require and that this court may deem just and proper.

3 DATED: May 5, 2008

WEEKS, KAUFMAN, NELSON & JOHNSON

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6 GREGORY L. WEEKS

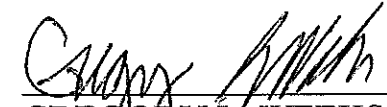
7 Attorney for Plaintiff, RED.COM, INC.

8 **JURY DEMAND**

9 Plaintiff hereby requests a trial by jury in this matter.

10 DATED: May 5, 2008

WEEKS, KAUFMAN, NELSON & JOHNSON

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13 GREGORY L. WEEKS

14 Attorney for Plaintiff, RED.COM, INC.  
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SAO 440 (Rev. 8/01) Summons in a Civil Action.

# UNITED STATES DISTRICT COURT

Central District of California

RED.COM, INC. dba RED DIGITAL  
CAMERA, a Washington corporation

V.

EPIC GAMES, INC., a Maryland  
corporation

## SUMMONS IN A CIVIL CASE

CASE NUMBER: **SACV08-00494 DOC (ANx)**

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Gregory L. Weeks, Esq.  
Weeks, Kaufman, Nelson & Johnson  
462 Stevens Avenue, Suite 310  
Solana Beach, CA 92075

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

SHERRI R. CARTER

CLERK

**ROLLS ROYCE PASCHAL**

(By) DEPUTY CLERK



MAY - 5 2008

DATE

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> Red.com, Inc. dba Red Digital Camera, a Washington corporation	<b>DEFENDANTS</b> Epic Games, Inc., a Maryland corporation
<b>(b) County of Residence of First Listed Plaintiff</b> (Except in U.S. Plaintiff Cases): Orange County, CA	<b>County of Residence of First Listed Defendant</b> (In U.S. Plaintiff Cases Only): Wake County, North Carolina
<b>(c) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Weeks, Kaufman, Nelson & Johnson 462 Stevens Avenue, Suite 310 Solana Beach, CA 92075 (858) 794-2140	<b>Attorneys</b> (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff     ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant     ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | PTF                        | DEF                        | Incorporated or Principal Place of Business in this State     | PTF                        | DEF                        |
|   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 |   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1 Original Proceeding    
 ☐ 2 Removed from State Court    
 ☐ 3 Remanded from Appellate Court    
 ☐ 4 Reinstated or Reopened    
 ☐ 5 Transferred from another district (specify):    
 ☐ 6 Multi-District Litigation    
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes   ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes   ☒ No☐ MONEY DEMANDED IN COMPLAINT: \$ \_\_\_\_\_**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
This is a case for declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202 and 35 U.S.C. Sections 1 et seq.**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No   ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Orange County, California

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

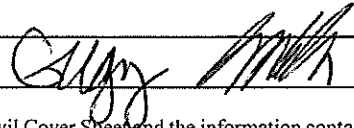
Wake County, North Carolina

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Orange County, California

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Date May 5, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))